

TO: Honorable Tina Kotek  
Honorable Paul Holvey  
Honorable Lee Beyer

FROM: Federal Housing Finance Agency  
Office of General Counsel

RE: House Bill 2009

The Federal Housing Finance Agency (FHFA) oversees Fannie Mae and Freddie Mac, the two government sponsored enterprises (GSEs or Enterprises) whose business includes purchasing mortgages made in Oregon that meet federal statutory and institutional standards. As part of that business, the Enterprises have long standing programs to assist homeowners in times of disasters and disruptions. The FHFA Office of General Counsel provides the following comments on House Bill 2009 in the interest of assuring effective assistance to Oregon homeowners consistent with federal programs.

## **HB 2009**

The Oregon legislature is considering HB 2009, which would create a renewed foreclosure moratorium and mandatory forbearance program, retroactive to January 1, 2021.

*Proposed Foreclosure Moratorium.* The proposed foreclosure moratorium would apply to owner-occupied and 1-4 unit rental properties and would be extended through September 1, 2021, with an option for the governor to extend the moratorium through December 31, 2021. Of note, the bill provides no exception for vacant properties and would void notices of default and judicial foreclosure complaints filed on and after January 1, 2021.

*Proposed Forbearance Program.* HB 2009 would reinstate and extend the requirement that lenders offer forbearance and deferral of missed payments, to be paid at loan maturity, of any payments accruing during the ongoing COVID emergency (through September 1, 2021, with an option for extension through December 31, 2021). Lenders would be required to issue a notice to borrowers of their rights under the bill, either by notifying all borrowers within 60 days of the bill's effective date or within 30 days to borrowers who miss a payment. Lenders would not be allowed to charge default interest or late fees during the period. Borrowers would need to affirmatively request such relief and lenders would be allowed to request documentation of the COVID-related difficulty.

## **Specific Concerns**

While seeking to protect Oregon homeowners, the proposal does not align with the President's Executive Order on foreclosure moratoria and mortgage forbearance and with aligned Enterprise policies, which provide different protections and more certainty for homeowners than HB 2009. The proposed legislation would create confusion and challenges for servicers, who operate on behalf of the Enterprises, seeking to implement federal law and address state provisions. Borrowers with Enterprise and other federally-guaranteed loans have benefitted from similar programs for almost one year and those benefits continue. Moreover, Enterprise policies have evolved over time on a national basis to address a variety of novel situations created by the global pandemic.

*President's Executive Order and Federal Response.* On February 16, 2021, the White House announced an extension of the foreclosure moratorium for homeowners with federally-guaranteed mortgages through June 30, 2021; an extension of the mortgage payment forbearance enrollment window until June 30, 2021 for borrowers who wish to request forbearance; and, up to six months of additional mortgage payment forbearance, in three-month increments, for borrowers who entered forbearance on or before June 30, 2020.

The Departments of Housing and Urban Development, Veterans Affairs and Agriculture are aligned with these policies.

On February 25, 2021, FHFA announced policies for Enterprise loans consistent with the Executive Order. Specifically, Fannie Mae and Freddie Mac extended the moratoria on single-family foreclosures and real estate owned (REO) evictions until June 30, 2021. The foreclosure moratorium applies to Enterprise-backed, single-family mortgages secured by occupied properties. The previous moratoria were set to expire on March 31, 2021.

Borrowers with a mortgage backed by Fannie Mae or Freddie Mac may be eligible for an additional three-month extension of COVID-19 forbearance. This additional three-month extension allows eligible borrowers to be in forbearance for up to 18 months. Further, COVID-19 Payment Deferral for borrowers with an Enterprise-backed mortgage can now cover up to 18 months of missed payments, allowing borrowers to repay their missed payments at the time the home is sold, refinanced or at mortgage maturity. Thousands of borrowers and renters across the country, as in Oregon, have received and will continue to receive relief through these Enterprise programs.

These coordinated actions apply to approximately 70 percent of existing single-family home mortgages. [See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>]

*HB 2009 Would Create Significant Inconsistencies and Adverse Impacts.* HB 2009 would create inconsistent policies and could disrupt effective operations under national programs.

HB 2009 proposes a foreclosure moratorium and forbearance extension through September 1, 2021, with a possible extension through December 31, 2021. This is inconsistent with Enterprise policies, outlined above, and the President's Executive Order. Pursuant to the President's Executive Order, anyone with a federally guaranteed mortgage can apply for a pause or reduction in their payments and is exempt from foreclosure until June 30, 2021. HB 2009 would create inconsistent dates and terms with these national policies and would create challenges for servicers (who administer loans and who will be expected to comply with both state and federal requirements). In some instances, complying with both regimes may be impossible.

HB 2009 provides no exemption for vacant or abandoned properties, thereby deviating from Enterprise policies. Imposing a moratorium on vacant or abandoned properties will contribute to neighborhood blight and property value deterioration. In some instances, such properties have been taken over by "squatters" engaged in gambling, drug dealing and other illegal activities. Further, HR 2009 would void notices of default and judicial foreclosure complaints, which would create

uncertainty and wasted expenditure of funds on foreclosures already in process prior to the effective date of the legislation.

HB 2009 does not address the duration of the forbearance that servicers must offer to borrowers, potentially leaving it up to the discretion of servicers. By contrast, Enterprise forbearance is available to eligible borrowers for a maximum period of 18 months; thus, servicers are equipped clearly with the capacity to offer 18 months of forbearance and payment deferral. Anything beyond this would create unreasonable risk to the mortgage market and compliance challenges for servicers.

HB 2009 creates confusion in its written notice requirement. The bill would require lenders to provide written notice to all Oregon borrowers of their forbearance rights under the law within 60 days of the effective date or within 30 days to borrowers who have missed their mortgage payment. Such a notice requirement is both challenging and unrealistic for Enterprise servicers and will create unnecessary confusion for Enterprise borrowers. For nearly one year, Enterprise servicers have been in contact with single family borrowers to discuss nationally-available forbearance options and will continue to discuss these options with borrowers and servicers until their hardships are resolved. Providing many of these same borrowers with a notification that they are eligible for forbearance under state law, with unclear forbearance periods and undetermined end dates, adds layers of confusion. Borrower confusion, in turn, will lead to voluminous “escalations” to servicers, government offices and others to help decipher redundant approaches.

### **Addressing Concerns with HB 2009**

HB 2009 seeks to address issues already subject to actions taken by the Enterprises, operating under FHFA conservatorships and in line with the President's Executive Orders. These programs continue to evolve and have been extended as necessary. To avoid disrupting these successful programs which provide significant homeowner relief, HB 2009 should exempt federally backed mortgages as borrowers and renters living in these properties are already protected through existing and time-tested federal programs.

Such an exemption could be addressed as follows:

*Notwithstanding anything else to the contrary herein, these provisions are not applicable to and do not affect any mortgage loans made, purchased, insured, or securitized by any agency or instrumentality of the United States, any Government Sponsored Enterprise, or a Federal Home Loan Bank, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association.*

The FHFA Office of General Counsel believes this approach will avoid needless confusion and avoid disrupting well-performing federal programs. I hope this information is of assistance to you.

Contacts: Frank Medina, Associate General Counsel  
Alfred Pollard, Senior Counsel